

WATER QUALITY ACT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill addresses enforcement of water quality provisions.

Highlighted Provisions:

This bill:

- ▶ attributes to an organization the actions of an individual acting wholly within the individual's employment with the organization;
- ▶ provides that an individual acting wholly within the individual's employment with an organization is not subject to certain legal actions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-115, as last amended by Laws of Utah 2013, Chapter 237

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-5-115** is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and



rules of political subdivisions -- Acts of individuals.

~~[(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.]~~

(1) As used in this section:

(a) "Criminal negligence" means the same as that term is defined in Section 76-2-103.

(b) "Knowingly" means the same as that term is defined in Section 76-2-103.

(c) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(d) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(e) "Willfully" means the same as that term is defined in Section 76-2-103.

(2) ~~[Any]~~ A person who violates this chapter, or any permit, rule, or order adopted under ~~[it]~~ this chapter, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day who, with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under ~~[it]~~ this chapter.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under ~~[it]~~ this chapter.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under ~~[it]~~ this chapter; or

(b) falsifies, tampers with, or knowingly renders inaccurate ~~[any]~~ a monitoring device or method required to be maintained under this chapter.

~~[(5) (a) As used in this section:]~~

~~[(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.]~~

~~[(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.]~~

~~[(b)]~~ (5) (a) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under ~~[it]~~ this chapter; and

(ii) knows at that time that the person is placing another person in imminent danger of death or serious bodily injury.

~~[(c)]~~ (b) If a person is an organization, ~~[it]~~ the organization shall, upon conviction of violating Subsection (5)~~[(b)]~~(a), be subject to a fine of not more than \$1,000,000.

~~[(d)]~~ (c) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

~~[(e)]~~ (d) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved ~~[prior to]~~ before giving consent.

(ii) The defendant has the burden of proof to establish ~~[any]~~ an affirmative defense under this Subsection (5)~~[(e)]~~(d) and shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections ~~[19-5-115]~~ (3) through (5), a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which ~~[it]~~ the director is authorized to issue a compliance order under Section ~~19-5-111~~.

(b) ~~[Actions shall be brought]~~ The director shall bring a civil action in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and the director and shall defend ~~[them in all actions or proceedings]~~ the board or director in an action or proceeding brought against ~~[them]~~ the board or director.

(b) The county attorney or district attorney, as appropriate under Section ~~17-18a-202~~ or

17-18a-203, in the county in which a cause of action arises, shall bring ~~any~~ an action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.

(c) The director may initiate ~~any~~ an action under this section and be represented by the attorney general.

(9) If ~~any~~ a person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) ~~Any~~ A political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), ~~all~~ penalties assessed and collected under the authority of this section shall be deposited ~~in~~ into the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

(12) (a) For purposes of this section or an ordinance or rule enacted by a political subdivision under Subsection (10), an act performed by an individual wholly within the scope of the individual's employment with an organization, is attributed to the organization.

(b) Notwithstanding the other provisions of this section, an action may not be brought against an individual acting wholly within the scope of the individual's employment with an organization if the action is brought under:

(i) this section;

(ii) an ordinance or rule issued by a political subdivision under Subsection (10); or

(iii) any local law or ordinance governing discharge.